

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

Electronically Filed

TODD GEISS and)	
TERRI GEISS)	
)	
PLAINTIFFS)	
v.)	CASE NO.3:22-cv-137
)	
)	
WALMART STORES EAST, LP;)	
WALMART STORES EAST, INC.; and)	
WALMART, INC.)	
)	
DEFENDANTS)	

NOTICE OF REMOVAL

Defendants, Walmart Stores East, LP, Walmart Stores East, Inc., and Walmart, Inc. (collectively, “Walmart”), by counsel, for their Notice of Removal of this action from the Warrick Circuit Court, Warrick County, Indiana, to this Court pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, respectfully state as follows:

1. On October 27, 2021, Plaintiffs filed an action against Walmart that is currently pending in the Warrick Circuit Court, Civil Action No. 87C01-2110-CT-002119. Walmart was served with a summons on October 29, 2021, and filed its Answer on November 5, 2021.

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332 (a) and (c) because there is diversity of citizenship between the parties and the total amount in controversy exceeds the jurisdictional minimum of \$75,000, although Walmart denies liability to Plaintiffs for damages in any amount.

3. Plaintiffs are citizens of Indiana.

4. Pursuant to 28 U.S.C. § 1332(c)(1), a corporation shall be deemed a citizen of its state of incorporation and the state where it has its principal place of business. Therefore, Defendant Walmart, Inc., is a citizen of Delaware, its state of incorporation, and Arkansas, the location of its principal place of business.

5. In accordance with *Carden v. Arkoma Associates*, 494 U.S. 185 (1990), the citizenship of a limited partnership, for diversity purposes, is based on the citizenship of each of its general and limited partners.

a. Defendant Walmart Stores East, LP has one general partner, WSE Management, LLC, and one limited partner, WSE Investment, LLC. The citizenship of an LLC is determined by that of each of its members. *Delay v. Rosenthal Collins Grp., Inc.*, 585 F.3d 1003, 1005 (6th Cir. 2009.)

b. The sole member of WSE Management, LLC and of WSE Investment, LLC is Walmart Stores East, LLC (f/k/a Wal-Mart Stores East, Inc.). The sole member of Wal-Mart Stores East, LLC is Walmart, Inc. (f/k/a Wal-Mart Stores, Inc.). As stated in Paragraph Four (4) above, pursuant to 28 U.S.C. § 1332(c)(1), Walmart Inc. is a citizen of Delaware, its state of incorporation, and Arkansas, its principal place of business. WSE Management, LLC is therefore a citizen of Arkansas and Delaware.

c. Like WSE Management, LLC, the sole member of WSE Investment, LLC is Wal-Mart Stores East, LLC, a citizen of Arkansas and Delaware. Therefore, Wal-Mart Stores East, LP is a citizen of Arkansas and Delaware.

6. The amount in controversy as to Plaintiffs' claims against Walmart is legally certain to exceed \$75,000, exclusive of interest and costs.

7. This case arises from an incident in which Plaintiff Todd Geiss allegedly sustained injury on the premises of a Walmart store in Booneville, Warrick County, Indiana on or about December 16, 2019, when he reportedly slipped in liquid in a bathroom. Plaintiff Terri Geiss, Todd's spouse, has made a derivative claim for loss of consortium. The Complaint alleges that Plaintiffs were injured due to the actions or inactions of Defendants.

8. In the Complaint, Plaintiffs seek unspecified damages for past and future personal injuries.

9. In an email sent on August 10, 2022, Plaintiffs' counsel made a settlement demand of \$500,000.00. The email is the first indication that Plaintiffs claim damages against Walmart that exceed \$75,000.00 exclusive of interest and costs. A copy of Plaintiffs' counsel's correspondence is attached as Exhibit A.

10. When removability is not readily apparent from the initial pleading a notice of removal must be filed within thirty (30) days after receipt of a "copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case ... has become removable." 28 U.S.C. § 1446(b)(3). This Notice of Removal is being filed on September 7, 2022, within thirty (30) days of Walmart's receipt of Plaintiff's August 10, 2022 email containing a settlement demand from which Walmart first ascertained that Plaintiff's alleged damages exceed \$75,000.00, exclusive of interest and costs.

11. A copy of all process, pleadings, and orders served in Warrick Circuit Court as of the date of the filing of this Notice of Removal is attached hereto as Exhibit B.

12. Written notice of the filing of this Notice of Removal, the Notice and the exhibits thereto, and the Certificate were mailed to Plaintiff's counsel today.

13. True and correct copies of the pleadings enumerated will be filed with the Clerk of the Warrick County Circuit Court.

WHEREFORE, Defendants, Walmart Stores East, LP, Walmart Stores East, Inc., and Walmart, Inc., respectfully request the removal of this action from the Warrick County Circuit Court to this Court for all other appropriate proceedings.

Respectfully submitted,

/s/ Emily C. Lamb
Jennifer Kincaid Adams
Emily C. Lamb (Atty. No. 30371-10)
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CERTIFICATE OF SERVICE

This is to certify that on September 7, 2022, a true and correct copy of the foregoing Notice of Removal was filed electronically with the Clerk of the Court using the CM/ECF system, which will send a notice of electronic filing to the following:

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/s/ Emily C. Lamb
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